JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1066

CITY OF PHOENIX, ARIZONA, et al,

Appellant,

versus

EMILY KOLODZIEJSKI,

Appellee

On Appeal from the United States District Court for the District of Arizona

BRIEF FOR THE POLICE JURY OF THE PARISH OF TANGIPAHOA, LOUISIANA, THE GOVERNING AUTHORITY OF ROAD DISTRICT NO. 505 OF TANGIPAHOA PARISH, LOUISIANA, AS AMICUS CURIAE

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INTEREST OF AMICUS CURIAE

May It Please the Court:

The present is the brief of the Police Jury of the Parish of Tangipahoa, Louisiana, acting as the governing authority

of Road District No. 505 of Tangipahoa Parish, Louisiana, as an Amicus Curiae appearing in the above-entitled case under Rule 42, Supreme Court Rules, Title 28, United States Code Annotated, both in support of the jurisdictional statement as well as upon the merits, and is being filed with notice but without the written consent of the parties directly involved in the appeal, as is permitted under paragraph 4 of the said Rule.

Road District No. 505, with the Police Jury as its governing authority, is a political subdivision of the State of Louisiana, under the authority of Article XIV, Sections 14(a)[1]

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[1] **§ 14. Subdivisions of state; creation; indebtedness; bond issues; special taxes**

Section 14. (a). Subdivisions of state listed; indebtedness; bond issues; tax. [As amended by Act 51 of 1926]. Municipal corporations, parishes and school, road, subroad, sewerage, drainage, subdrainage (waterworks and sub-waterworks) districts, hereinafter referred to as subdivisions of the State, may incur debt and issue negotiable bonds, when authorized by a vote of a majority in number and amount, of the property tax-payers qualified to vote under the Constitution and laws of this State, who vote at an election held for that purpose after notice published or posted for thirty (30) days in such manner as the Legislature may prescribe, and the governing authorities of such subdivisions shall impose and collect annually, in excess of all other taxes, a tax sufficient to pay the interest annually or semi-annually and the principal falling due each year, or such amount as may be required for any sinking fund necessary to retire said bonds at maturity.

(a). [As Amended by Act 261 of 1926]. Municipal corporations, parishes and schools, road, subroad, sewerage, drainage and subdrainage districts, and irrigation districts, hereinafter referred to as subdivisions of the State, may incur debt and issue negotiable bonds, when authorized by vote of a majority in number and amount of the property taxpayers qualified to vote under the Constitution and laws of this State, who vote at an election held for that purpose after notice published or posted for thirty (30) days in such manner as the Legislature may prescribe, and the governing authorities of such subdivisions shall impose and collect annually, in excess of all other taxes, a tax sufficient to pay the interest annually or semi-annually and the principal falling due each year, or such amount as may be required for any sinking fund necessary to retire said bonds at maturity; provided that the governing authority of any municipality which

and 14(c)[2] of the Louisiana Constitution of 1921, as supplemented by L.R.S. 48:571.[3]

The Police Jury of Tangipahoa Parish, acting as the governing authority of Road District No. 505 of Tangipahoa Parish, Louisiana, held a special bond and tax election to incur debt and to issue bonds in the sum of $80,000, on June 7, 1969. The election carried by a substantial majority both in the number of voters participating as well as in the total amount of assessments involved, and thereafter, on June 10, 1969, these

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has established and is maintaining and supporting public schools of its own shall not be required to impose and collect such tax upon property included within any territory annexed to the municipality for the retirement of bonded indebtedness incurred by the municipality for school purposes prior to the annexation of such territory. (As amended Acts 1964, No. 561, adopted Nov. 3, 1964.)

[2](c). **Road districts, sub-road districts and sewerage districts.** The Legislature may by general law authorize the police juries to create road districts and sub-road districts, composed of territory either wholly within a parish or partly within two or more parishes, and may by general law authorize the police juries to create sewerage districts, composed of territory wholly within a parish, but no sewerage district shall be created comprising the whole territory of a parish; and may by general law authorize municipal corporations to create sewerage districts, whose territory may be less than the territory of the municipality; and may by general law, and within the limitations and conditions herein contained, authorize road districts or sub-road districts so created, through the police jury or juries of the parish or parishes as the governing authority thereof, to incur debt and issue negotiable bonds for the purpose of opening, constructing, improving and maintaining public roads, highways, and bridges in such districts; and may, by general law, and within the limitations and conditions herein contained, authorize sewerage districts, through the governing authority thereof, to incur debt and issue negotiable bonds for the purpose of constructing and maintaining sewers and sewerage disposal works for such districts.

[3] **§ 571. Creation authorized; political subdivision**

Parish governing authorities may create road districts and sub-road districts in the manner and subject to the limitations and restrictions contained in this Part.

Road districts so created are sub-divisions of the state within the meaning of the laws of Louisiana relating to incurring debt and issuing bonds therefor.

results were promulgated by the Police Jury and were published in the official journal of the District on June 19, 1969.

All of the proceedings in reference to the matter were carried out in compliance with Article XIV, Section 14(a) of the Louisiana Constitution,[1] and L.R.S. 39:501, et seq.

The right to participate in this election was restricted under these provisions to qualified taxpaying electors owning real and personal properties.

The petitioner in the Tangipahoa case sought full injunctive relief, against the issuance of the Bonds authorized in said election.

Petitioner in the Tangipahoa case as well as those of his class were shown to be duly qualified electors of the Parish, living within the area of the Road District, but owning no personal or real property subject to the ad valorem tax for debt service on the Bonds. Nevertheless, the contention was made that petitioner and others similarly situated were deprived of the elective franchise in said election solely because of their failure to own any property that would be subject to the taxes, and that plaintiff was thereby discriminated against in favor of persons who owned property who would pay all of the taxes required, and that in this respect they were deprived of rights, privileges and immunities under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

In the present Arizona case, the decision by the three-judge court was based on a stipulation of fact strongly indicative of a desire on the part of all litigants to show that there

was no compelling state interest that would justify any distinction under the law of Arizona between a "general obligation" bond (or a property bond), and a "revenue" bond, such as was involved in the case of *Joseph Q. Cipriano v. City of Houma, et al*, 395 U. S. 701, 89 Sup. Ct. 1897, 23 L.Ed 2d 647.

The three-judge court below in the Arizona case found as follows:

> "As in *Cipriano, supra*, we find the challenged Constitutional provision and the challenged Statutes under which the election was held to contain 'a classification which excludes otherwise qualified voters, who are as substantially affected and directly interested in the matters voted upon as those permitted to vote.' There was no evidence before this Court which would justify the conclusion that the exclusions under Arizona law are necessary to promote a compelling State interest. Moreover, in the instant case we find no evidence which would justify a distinction between Revenue Bonds and General Obligation Bonds."

The Court thus concluded its decision as follows:

> "In *Cipriano, supra*, in order to avoid significant hardships on cities' bondholders and others, the Court held the rule of that case would be applied prospectively, 'only where, under state law, the time for challenging the election result has not expired, or in cases brought within the time specified by state law for challenging the election and which are not yet final. Thus, the decision will not apply where the authorization to issue the securities is legally complete on the date of this decision.'
>
> "In the instant case the authorization to issue the securities was not legally complete by June 16, 1969, (the date of the *Cipriano* decision) nor had the time expired

within which the election could have been contested. In the instant case we find the Arizona Constitutional and Statutory exclusions involved in the election called by the City of Phoenix and held June 10, 1969, to be violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States."

Accordingly, the Court has invalidated the property bond laws of Arizona, and denied prospective relief by applying the June 16, 1969, date of the Cipriano decree, as the cut-off date.

In the Tangipahoa case the Supreme Court of Louisiana rendered a final judgment and decree on Monday, December 15, 1969 (rehearing denied), sustaining a sixty-day constitutional prescriptive plea arising under Article XIV, Section 14(n) of the Louisiana Constitution.[4] (See exhibit A for a copy of the decree.) This sixty-day prescriptive period is the same period as was recognized by this Court as valid in the Cipriano case, supra, where strictly a revenue bond was involved. Article XIV, Section 14 of the Louisiana Constitu-

[4](n). **Contest of bond issue or tax; time.** For a period of sixty (60) days from the date of promulgation of the result of any election held under the provisions of this section, any person in interest shall have the right to contest the legality of such election, the bond issue provided for, or the tax authorized, for any cause; after which time no one shall have any cause or right of action to contest the regularity, formality, or legality of said election, tax provision, or bond authorization, for any cause whatsoever. If the validity of any election, special tax or bond issue authorized or provided for, held under the provisions of this section, is not raised within the sixty (60) days herein prescribed, the authority to issue the bonds, the legality thereof and of the taxes necessary to pay the same shall be conclusively presumed, and no court shall have authority to inquire into such matters. The provisions of this section shall not apply to the City of New Orleans.

tion[1] applies both to property bonds [Article XIV, Section 14(a)], and to revenue bonds [Article XIV, Section 14(m).][5]

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[5] (m). **Revenue bonds; acquisition, etc., of utilities.** For the purpose of constructing, acquiring, extending or improving any revenue-producing public utility, the Legislature may authorize municipal corporations to issue bonds secured exclusively, principal and interest, by mortgage on the lands, buildings, machinery and equipment and by pledge of the income and revenues of such public utility. Such bonds shall not be a charge upon the other income and revenues of the municipality and shall not be included in computing the indebtedness of the municipality for the purpose of any limitation herein.

For the purpose of constructing, acquiring, extending or improving any revenue producing public utility, as defined by the Legislature, the Legislature may authorize any political subdivision or taxing district authorized to issue bonds under authority of this Section 14, excluding municipal corporations, to issue its revenue bonds; which bonds shall be fully negotiable, shall bear interest at a coupon rate not exceeding six per cent per annum, shall mature serially or otherwise not later than forty years from their date, shall not be a charge upon any income or revenue of the district or municipality not derived from the utility, and shall not be included in computing the indebtedness of the subdivision or district, for the purpose of any limitation contained in the Constitution. The Legislature shall provide that any bonds issued hereunder shall be secured by a conventional mortgage on the entire utility so constructed, acquired, extended or improved, and by pledge of the income and revenues thereof, sufficient in amount to pay principal of and interest on said bonds as they severally mature; which security may be foreclosed by seizure and sale of the encumbered property in the manner provided by law for the foreclosure of conventional mortgages, including the right to executory process, and the Legislature shall provide for the granting of a franchise to the purchaser at foreclosure sale, if any, which franchise shall run for a period not exceeding forty years from the date of such sale and shall be subject to any other constitutional or statutory limitations pertaining to the granting of municipal franchises. The Legislature shall also provide that when bonds are issued hereunder, the issuing subdivision or district must impose rates for the services rendered by the utility fully sufficient to operate and maintain the utility, to pay principal of and interest on the bonds, and to provide an adequate fund for depreciation, improvements and extensions, and provisions may be made for encumbering two or more utilities for the construction, acquisition, extension or improvement of any one or more of the utilities encumbered. The Legislature may, in its discretion, require an election by the tax-paying voters of the subdivision or district as a condition precedent to the issuance of such bonds, in which case the voters' qualifications shall be governed by the provisions of this Section XIV. pertaining to other bond elections. If the validity of any bonds issued here-

The judgment and decree of the Louisiana Supreme Court in the Tangipahoa case will be under consideration by this Court upon an application for writs of review to this Court to be filed prior to the time the appeal from the decision rendered below in the City of Phoenix case would normally be disposed of by this Court.

STATEMENT

The Police Jury of the Parish of Tangipahoa, Louisiana, as the governing authority of Road District No. 505 of Tangipahoa Parish, Louisiana, and as Amicus Curiae, adopts the Statement of the Case appearing in the Statement by appellant, City of Phoenix, Arizona, upon the jurisdictional question, as amplified by the Stipulation of Fact contained in the transcript of the proceedings in the three-judge Court below.

SUMMARY OF THE ARGUMENT

This brief deals with the merits of the case here to establish the fact that in Arizona where a combination real property and non-real property bond was involved whatever the conclusion of this Court upon the merits that under the doctrine of hardship emphasized in Cipriano, such ruling should be made prospective. The vital necessity for prompt,

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under be not questioned in litigation commenced within thirty days from the date of publication of the ordinance or resolution authorizing the issuance of such bonds, the authority to issue the bonds, the legality thereof, and the security therefor, shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters. Any law or laws enacted by the Legislature for the purpose of putting this added paragraph to Subsection (m) into effect and which may have been finally passed by the Legislature after the passage of the joint resolution proposing this amendment and prior to the adoption of said amendment by the electors of Louisiana, shall be valid and fully effective if and when said proposed amendment be adopted.

full appearance at this time is the fact that here the national import and the importance of the jurisdictional question can only be evaluated by this Court if full consideration is given to the merits of the Arizona decision as this decision might be interpreted and applied in other states, and particularly as it might be interpreted and applied to strictly property bond elections in the State of Louisiana, where the decision of the three-judge Court below is based primarily upon the Cipriano case, supra, a revenue bond arising in Louisiana in which the prospective date of the decree was made effective on June 16, 1969.

ARGUMENT

As was found by the Supreme Court of Louisiana, the election held in the Tangipahoa case was conducted in strict compliance with the Constitution and laws of Louisiana. The results were promulgated on June 19, 1969, and duly published as required under Louisiana law. The suit in the Tangipahoa case was not filed until November 19, 1969, subsequent to the June 16th date, and subsequent to the running of the sixty-day constitutional prescriptive or peremptive period.

The language of the three-judge decision in the City of Phoenix case has "stymied" or deterred the sale of the Tangipahoa Bonds and of property bonds generally in Louisiana for multiple essential public purposes, even though (i) the June 16th date fixed by this Court in the Cipriano case, supra, is not applicable, (ii) the reasoning of this Court both in Cipriano, supra, and in the companion case of *Kramer v. Union Free School District No. 15*, 395 U. S. 621; 89 S.Ct. 1886, 23 L. Ed.2d 583, when interpreted in relationship to the law of Louisiana governing general obligation bonds will justify this

Court in holding that the exclusion of non-taxpaying qualified electors in the Tangipahoa case are necessary to promote a compelling State interest justifying under Louisiana law circumstances limiting the franchise to those primarily interested, who are the qualified taxpaying electors, (iii) the Tangipahoa Bonds and many other issues similarly situated are entitled under the rule of "prospective application" to be proceeded with without delay.

There is a basic distinction between general obligation bonds and revenue bonds as were involved in the Cipriano case, supra, where this Court stated:

> "The revenue bonds are to be paid only from the operations of the utilities; they are not financed in any way by property tax revenue. Property owners, like non-property owners, use the utilities and pay the rates; however, the impact of the revenue bond issue on them is unconnected to their status as property taxpayers. Indeed, the benefits and burdens of the bond issue fall indiscriminately on property owner and non-property owner alike."

The Court there emphasized that the classification embodied in the revenue bond law of Louisiana attempted to establish and maintain in effect an arbitrary classification "which excludes otherwise qualified voters who are as substantially affected and directly interested in the matter voted upon as those who are permitted to vote."

The Court emphasized that such classifications where a bond election is involved must provide a "rational basis" for limiting the franchise to those voters with a special interest, and that the statute there under consideration "clearly" did "not meet the 'exacting standard of precision we require of

statutes which selectively distribute the franchise.' *Kramer v. Union Free School District No. 15*, ante, at 11."

The stipulation of fact relied upon by the three-judge court in the present case may not be contained in the petition filed upon the jurisdictional point. It should be found in the certified transcript of the proceedings of the Court below in connection with the appeal. This stipulation establishes without question the fact that plaintiff paid "excise" taxes to the City of Phoenix on all items purchased within the said City of Phoenix that were subject to such excise taxes, and that these excise taxes were commingled with a general fund out of which the City of Phoenix annually and historically paid the debt service, when due, upon its general obligation bonds, including the bonds voted upon, and that for the fiscal year 1969-1970 only $2,350,000 of the annual general obligation debt service requirement of $5,594,973 was to be paid by levy of ad valorem property taxes, and the remaining $3,244,773 was to be paid from other sources, including the excise taxes.

We quote from the stipulation of fact the following:

> "* * * The ratio between real property tax collections and other source monies is representative of the recent years' apportionments for debt service on general obligation bonds. Plaintiff directly contributes to all funds raised from sources other than real property taxes, and plaintiff is derivatively affected by the levy of a real property tax insofar as it affects the cost of goods and services."

Further, under Article VII, Section 13 of the Constitution of Arizona (see Appendix A to appellant's pleadings filed herein) questions upon bond issues, or special assessments are

submitted to the vote of only "real property taxpayers," rather than the vote of the taxpayers otherwise directly subjected to the tax under the plan, and since all of these taxes went into the general fund of the City of Phoenix, out of which the general obligations were paid, plaintiff or members of his "class" paid ad valorem taxes levied upon personal property, and/or incorporeal rights in addition to the excise taxes which the class was admittedly paying.

Under Louisiana law the special tax necessary to meet debt service requirements on general obligation bonds are separately levied, collected, deposited, and paid out, and no commingling of tax monies are permitted with other general fund money.

Further, in the Tangipahoa case the taxpaying voters primarily interested are exclusively subject to the seizure and sale of their property if the taxes are not paid.

It is to be noted that general obligation bonds authorized by Article XIV, Section 14(a) of the Louisiana Constitution[1] empowers the governing authorities of subdivisions of the State in connection therewith to "impose and collect annually in excess of all other taxes a tax sufficient to pay the interest annually, or semiannually and the principal falling due each year, or such amount as may be required for any sinking fund necessary to retire said bonds at maturity."

An entirely different premise is presented in estimating the compelling state interest in Louisiana, and thus, it is important to Louisiana, and to all of the states that are involved, that the Arizona decision as written below should not be left without a more detailed explanation of what the Court was really talking about when it concluded that there was no

evidence before the Court that justified the conclusion that the "exclusions under Arizona law were necessary to promote a compelling state interest," and furthermore, that they did not find "facts which would justify a distinction between revenue bonds and general obligation bonds under the laws of that state."

A great direct harm that is done particularly to Louisiana is the fact that in the footnote to the Arizona decision direct reference is made to the Cipriano case, a case arising and decided under Louisiana law. The implication is that the doctrine of the Cipriano case is to be applied to general obligation bonds in Louisiana, as of June 16, 1969, the date of the Cipriano decree.

Pretermitting any assumption as to what the conclusion of this Court will be upon the merits in the Tangipahoa case it does appear convincingly that under the hardship doctrine and the prospective application rule enunciated and emphasized in the Cipriano case, supra, the June 16, 1969, deadline fixed in that case is not to be interpreted as preventing Louisiana and other states from selling general obligation bonds essential to public services in the meantime, if the full sixty-day constitutional prescriptive and peremptive period following publication of the election results has expired without the filing of any such suit. Until this Court finally acts upon a proper case involving a general obligation bond (property bond) such as will be presented to this Court in the said Tangipahoa case local political subdivisions should be upheld in relying upon the prospective application of the Cipriano case.

In the Cipriano case, supra, the Court emphasized that:

> "* * * Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity. *Great Northern R. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 386 (1932). See *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940). Cf. *Linkletter v. Walker*, 381 U.S. 618 (1965).* * *"

There, the Court in a concluding and what would appear to be a rather conclusive statement said:

> "* * * Therefore, we will apply our decision in this case prospectively. That is, we will apply it only where, under state law, the time for challenging the election result has not expired, or in cases brought within the time specified by state law for challenging the election and which are not yet final. Thus, the decision will not apply where the authorization to issue the securities is legally complete on the date of this decision. Of course, our decision will not affect the validity of securities which have been sold or issued prior to this decision and pursuant to such final authorization."

Manifestly under the equitable doctrine of hardship the Court was restricting the import of its decision to cases involving revenue bonds of the kind there involved. Plainly thereunder, the June 16th date is not to be applied to any case (even the present City of Phoenix case) where whatever the reasonableness of the classification, the people of Arizona and other states are entitled to the protection against the injustice or hardship by a ruling of non-retroactivity where a **general obligation bond** is involved, even though in Arizona, or in a given case this Court might conclude that the classification relied upon fails to meet the exacting standard of

precision discussed in the cases of both Kramer and Cipriano, supra.

CONCLUSION

Amicus Curiae has been required to prepare the present brief without the benefit of the Supreme Court record, and/or without the benefit of the certified transcript of the proceedings in the three-judge court, except certain excerpts therefrom. Because of this hurried action the appendices and references may not fully conform to all of the Rule requirements. Such action seems warranted if not indispensable where the parties in this case are moving the case in this Court to the point of jurisdictional determination and final decision as rapidly as circumstances will permit.

If permitted by this Court to do so, Amicus Curiae will prepare and file a further brief upon the merits, if the jurisdictional fact is recognized by this Court and the case is fixed for full hearing under the Rules of the Court.

Respectfully submitted,

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CERTIFICATE

I, undersigned counsel for Amicus Curiae, Police Jury of the Parish of Tangipahoa, Louisiana, the governing authority of Road District No. 505 of Tangipahoa Parish, Louisiana, do hereby certify that a copy of the foregoing brief has been served on all counsel in this matter by depositing a copy thereof in the United States Mail, postage prepaid, addressed to each of them at his respective address of record.

This _____ day of January, 1970.

_____

EXHIBIT A

SUPREME COURT OF LOUISIANA

STRICK CHAMBERS

v. No. 50,244

ROAD DISTRICT NO. 505
OF TANGIPAHOA PARISH,
LOUISIANA, ET AL.

APPEAL FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT FOR THE PARISH OF TANGIPAHOA, STATE OF LOUISIANA; HONORABLE WILLIAM M. DAWKINS, JUDGE

HAMITER, Justice.

In this suit, brought against Road District No. 505 of Tangipahoa Parish, Louisiana, and also against the Police Jury and certain named officials of such parish, Strick Chambers challenges the validity or legality of a bond and tax election called by the governing authority of the Road District and held on June 7, 1969.

The plaintiff is a non-property owning resident, but a qualified elector of the parish; and, as such, he represents (besides himself) others of a class similarly situated. In his petition it is urged that he and the other members of the class were discriminated against in the bond and tax election by virtue of their not having been permitted to vote in the election which approved the issuance of the bonds, this because they did not own taxable property in the parish. He relies primarily on two cases recently decided by the United States

Supreme Court, namely: Kramer v. Union Free School District No. 15 et al., ___ U. S. ___, 23 L. Ed. 2d. 583 and Cipriano v. City of Houma et al., ___ U. S. ___, 23 L. Ed 2d. 647 (hereinafter discussed).

All defendants tendered a plea of peremption alleging that plaintiff's action is barred by virtue of the provisions of Article 14, Section 14(n) of the Louisiana Constitution, and of LRS 39:518. They also filed an answer. Later, the entire case was submitted to the district court on a stipulation of facts.

The court maintained the plea of peremption and dismissed the suit at plaintiff's costs. Plaintiff is appealing.

Here, the case was submitted on a joint motion pursuant to Section 8, Rule VIII, of the Rules of this court.

The constitutional and statutory provisions relied on by defendants to support their plea of peremption authorize suits to contest the legality of bond and tax elections; but they also establish a peremptive period of sixty days from the date of promulgation of the returns of the election, during which period such suits can be brought. They declare, however, that if no suit is filed within such period of sixty days the legality of the election is conclusively presumed, and no court shall have authority to inquire into the matter.

The election here involved was conducted in compliance with the Constitution and laws of Louisiana, and the results were promulgated on June 19, 1969. The instant suit was not filed until November 14, 1969, almost five months after the

promulgation and three months after the peremptive period had expired.

The plaintiff in Andrieux v. East Baton Rouge Parish School Board et al., No. 50,160 of the Docket of this Court, attacked a similar bond and tax election on the same ground as urged by petitioner here. Therein we again reiterated our consistent holding that "the constitutional and statutory peremptive period operates as a complete extinguishment of the right to attack bond and tax elections," it prohibiting thereafter a contest over such elections for any cause whatsoever. See also Gough v. LaSalle Parish School Board, 210 La. 554, 27 So. 2d. 330, Harrel v. Winn Parish School Board, 214 La. 1095, 39 So.2d. 743, Redmon v. Sub-Sewerage District No. of Sewerage District No. 1, Parish of Jefferson, 226 La. 245, 75 So. 2d. 854, and McLavy v. American Legion Housing Corporation et al., 227 La. 300, 79 So. 2d. 316. (Other cases enunciating this principle are cited in Andrieux v. East Baton Rouge Parish School Board et al., supra.)

Inasmuch as the present litigation was not commenced within sixty days after the promulgation of the result of the bond and tax election involved herein the trial judge properly sustained defendants' exception of peremption and dismissed the suit.

We do not agree with plaintiff's counsel that the rendition of the decisions in Cipriano v. Houma et al. and Kramer v. Union Free School District No. 15 et al., both supra, by the United States Supreme Court on June 15, 1969, in any manner affects the result reached by us. To the contrary, we think that the language of the court in both cases specifically recognizes that in order for the holdings to apply the suit at-

tacking the validity of the bond and tax election must be brought within the state's peremptive period.

In the Cipriano case, after holding that in some instances the denial of the right to vote to persons situated as this plaintiff might result in the nullity of the election (as it did there), the court announced its intention to apply the decision only prospectively. But it said: "That is, we will apply it **only** where **under state law**, the time for challenging the election result **has not expired**, or in cases brought **within the time specified by state law and which are not yet final.** * * * Incidentally, that suit had been filed within the state's sixty-day peremptive period. (Underscoring ours.)

As we observed in Andrieux v. East Baton Rouge Parish School Board et al., supra, the United States Supreme Court in the two cases relied on by plaintiff "recognized that state prescriptive or peremptive provisions were valid as a bar to such attacks."

For the reasons assigned the judgment of the district court sustaining defendants' plea of peremption and dismissing the suit at plaintiff's costs is affirmed. Costs of this Court are assessed against plaintiff.